

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Green Bay, Wisconsin)

MM Docket No. 01-334  
RM-10343

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: October 12, 2004**

**Released: October 20, 2004**

By the Chief, Video Division:

1. At the request of CBS Broadcasting Inc. ("CBS"), licensee of station WFRV-TV, Green Bay, Wisconsin, the Commission has before it the Notice of Proposed Rule Making, 16 FCC Rcd 21923 (2001), proposing the substitution of DTV channel 39 for DTV channel 56 at Green Bay. CBS and the State of Wisconsin Educational Communications Board ("WECB"), licensee of station WPNE(TV), filed comments. Ace TV, Inc. ("Ace"), licensee of WACY(TV), channel 32, Appleton, Wisconsin, filed a counterproposal requesting the substitution of DTV channel 39 for WACY-DT' assigned DTV channel 56 at Appleton, Wisconsin.<sup>1</sup> CBS and WECB filed reply comments. Ace and CBS filed a joint reply.

2. CBS states that since DTV channel 56 is outside the core television spectrum, it would eventually need to transition WFRT-DT to a channel within the core spectrum. This transition, CBS asserts, will impose an unnecessary burden on it since it will require the building of a second DTV facility for WFRV-DT during the DTV transition. CBS maintains that adoption of its channel substitution proposal will enable WFRV-DT to commence its DTV operation on a core channel and avoid needless construction.

3. WECB, the licensee of station WPNE(TV), channel 38, Green Bay, Wisconsin, filed comments opposing the channel substitution on interference grounds. WECB alleges that station WPNE(TV) would receive interference to 1.7 per cent of its population as opposed to the 0.6 percent claimed by CBS. Additionally, WECB asserts, many of the viewers of station WPNE(TV) utilize older TV sets that are more susceptible to adjacent channel interference. Thus, it contends that an additional burden would be placed upon station WPNE(TV) to ensure that its visual carrier frequency is maintained at 5.08 MHz below the digital pilot carrier. Further, WECB argues, the operation of WFRV-TV on channel 39 would place restrictions on

<sup>1</sup> Subsequently, Ace and CBS filed an agreement for resolution of the conflicting proposals. Ace states that it can substitute DTV channel 27 for DTV channel 39 at Appleton, Wisconsin, which would remove the conflict between the two proposals. Since there is no mutually exclusivity between the allotment of DTV channel 39 to Green Bay and the use of alternate DTV channel 27 at Appleton, Wisconsin, we will consider Ace's request as a new petition for rule making and will issue a separate Notice of Proposed Rule Making.

any future relocation of WPNE(TV) that may be necessary to serve its viewers as the population expands.<sup>2</sup>

4. In rebuttal, CBS reiterates that its proposed channel substitution will not result in the interference concerns raised by WECB. CBS contends that WECB's objections are unsupported and appear to be based on engineering calculations that were not made in full conformance with the OET Bulletin No. 69.<sup>3</sup> In replying to WECB's claim regarding pilot carrier frequency compliance, CBS states that pursuant to Section 73.622(g)(1) it is clearly the burden of the DTV station to maintain the offset and CBS states that it does not object to a "c" designation to minimize the potential for interference to WPNE. As to the assertion that viewers of older TV sets may be susceptible to adjacent channel interference, CBS asserts that this contention is unsupported. Finally, with respect to WECB's concern that future coordination of facility upgrades and/or site locations will be jeopardized should the Commission adopt WFRV-TV's request, CBS affirms its willingness to cooperate with WECB on such matters.<sup>4</sup>

5. Section 73.623(c) of the Commission Rules specifies the protection requirements for DTV applications with respect to other DTV stations and allotments, and NTSC stations. In general, interference to such stations affecting less than 2 percent of the population they serve is considered de minimis. The acceptable procedures for determining interference are outlined in OET Bulletin No. 69, which provides guidance on the use of the Longley-Rice propagation tool for ascertaining interference levels. Our engineering analysis, utilizing the appropriate technical model, clearly demonstrates that the CBS proposal complies with the 2 percent standard. It

---

<sup>2</sup> WECB also alleges that the proposed channel substitution would cause excessive interference to stations WZZM-TV, Grand Rapids, Michigan, and WQRT-TV, Rockford, Illinois. Neither of these stations objected to this proposal. Finally, WECB alleges that the proposal is short-spaced to a pending application for a new NTSC facility in Marshfield, Wisconsin, (File No. BPCT-19960220KF).

<sup>3</sup> In its engineering statement, CBS refutes WECB's calculations. It states that the authorized WPNE operation is predicted to receive interference to only 4,651 persons or 0.6 percent of WPNE baseline population of 747,195 persons. CBS submits interference calculations for WZZM-DT, Grand Rapids, Michigan, and WQRF-TV, Rockford, Illinois, respectively, indicating that 20,546 persons or 1.7 percent of WZZM-DT baseline population of 1,233,082 persons, and; 11,694 persons or 1.7 percent of the WQRF-DT baseline population of 691,379 persons are predicted to receive interference from the proposed channel 39 DTV allotment.

CBS also disputes WECB's claim that the proposed DTV channel 39 allotment would be short spaced to a pending co-channel application for Marshfield, Wisconsin, by 4.8 kilometers. It states that the DTV spacing requirements of Section 73.623 (d)(2) of the Commission's Rules apply only to new DTV allotments or modifications to allotments not included in the initial DTV Table of Allotments. CBS argues that it is requesting a modification to a DTV allotment that was included in the initial DTV Table, therefore, the spacing requirements do not apply. Nevertheless, CBS states that its interference studies indicate that no interference is predicted to the proposed channel 39 operation at Marshfield.

<sup>4</sup> With respect to WECB's argument that the 2000 Census should be used in determining service losses, in MM Docket No. 00-39, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946 (2001), the Commission stated it had no plans to convert its processing analysis to use new census data, but, would continue to use the 1990 Census population data.

serves little purpose to debate whether CBS's calculations or WECB's calculations of interference is correct. Both numbers are below 2 percent which means that the proposal meets the requirements of Section 73.623(c). We also reject WECB's argument that we must look beyond the interference standard in this case due to the special circumstances of station WPNE(TV), i.e. older television sets of its viewers, or the inability of WPNE(TV) to expand in the future. Those allegations are largely unsupported and speculative. *See Albany, New York*, MB Docket No. 02-92, DA 04-5501, released March 10, 2004. Additionally, CBS has affirmed its willingness to comply with the Commission's offset requirements and will cooperate with WECB on this matter. We will require that the proposed channel 39 operate with an offset.

6. Based upon on review, we find that the public interest would be served by substituting DTV channel 39c for DTV channel 56 since it would permit CBS to operate on an in-core channel. DTV channel 39c can be allotted to Green Bay, Wisconsin, as proposed, in compliance with the principle community coverage requirement of Section 73.625(a) at coordinates 44-20-01 N. and 87-58-56 W. Since the community of Green Bay is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian has been obtained for this allotment. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WFRV-DT with the following specifications:

<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
WI Green Bay	39c	1000	364	997

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 6, 2004, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Green Bay, Wisconsin	23, 39c, 41, *42, 51

8. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, CBS Broadcasting, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 39c in lieu of DTV Channel 56 for station WFRV-DT.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

**FEDERAL COMMUNICATIONS COMMISSION**

**Barbara A. Kreisman  
Chief, Video Division  
Media Bureau**